

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 04.12.2019

CORAM

**THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN**

C.R.P. (PD) 3931 of 2019

and

C.M.P. 25956 of 2019

1. P.Mylsamy

2. M.Maheswari

... Petitioners

Versus

1. K.Ponnusamy

2. K.Rakkiappan

... Respondents

**PRAYER :** Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the Order dated 07.06.2019 passed in I.A.No.1245 of 2016 in O.S.No.147 of 2016 on the file of District Munsif, Pollachi, dismissing the petitioner filed under Order VII Rule 11 of C.P.C. for rejection of plaint.

For Petitioners : Mr.R.Kannan

**ORDER**

This Civil Revision Petition has been filed challenging the order dismissing the petitioners' application filed under Order VII Rule 11 of C.P.C.

2. The respondents herein filed a Suit for bare injunction against the petitioners, on the ground that, the 'A' schedule property has been purchased by him in the year 1981, and 'B' schedule property by virtue of the Will executed by one Valliammal, they acquired title over the same, and they have been in possession and enjoyment of both 'A' and 'B' schedule properties. Now, the respondents are trying to interfere with their peaceful possession and enjoyment of the properties. Hence, they have filed a suit. Thereafter, the petitioners have filed an application under Order VII Rule 11 of C.P.C. on the ground that, in respect of very same property, earlier, there are two rounds of litigations, and two suits have been filed by the petitioners herein. Both the Suits were ended in their favour. Without disclosing those facts, the present Suit has been filed by suppressing the material facts. According to the petitioners, no cause of action arises for filing the present Suit. The Trial Court after considering the entire pleadings, has held that, both the suits have been filed for permanent injunction, and the averments made in the plaint alone germane, to decide the issue in the application filed under Order VII Rule 11 of C.P.C. and

whatever the averments stated in the written statement cannot be considered. The Trial Court, holding so, dismissed the petition. Now, challenging the same, the present Civil Revision Petition has been filed.

3. I have heard and considered the submissions made by the learned counsel appearing for the petitioner and perused the materials available on record carefully.

4. The premortal contention of learned counsel appearing for the petitioners is that, in respect of very same property, already two suits have been filed, and appeals also filed. Without disclosing the same, the present Suit has been filed as if the petitioners are interfering with the suit properties, the learned counsel has relied upon judgments in the earlier suits.

5. So far as the application under Order VII Rule 11 of C.P.C. is concerned, the averment made in the plaint only germane to decide the issue, and the court has to see whether the averments made in the plaint disclose any cause of action. The issue of resjudicata or the applicability of Order VII Rule 2 of C.P.C. cannot be decided in the application filed under Order VII Rule 11 of C.P.C. The Trial Court after considering the entire

materials, has rightly dismissed the application. Hence, there is no illegality or irregularity in the order passed by the Trial Court, and I find no merit in the Civil Revision Petition. However, it is always open to the petitioners to raise all the above issues in the suit. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

**04.12.2019**

Index:Yes/No  
Internet:Yes/no  
Speaking Order/Non Speaking Order  
rpp

To

District Judge,  
District Munsif Court,  
Pollachi.

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**V.BHARATHIDASAN,J.**

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**04.12.2019**